

IOWA BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF:

Jerald Harter,

Respondent.

**Case Nos. 19-144 and 19-150
20BEE0021**

**Order Regarding Proposed
Decision**

This matter came before the Board through a Complaint. The Board found probable cause to set the matter for hearing, and a hearing took place before Administrative Law Judge Laura Lockard on July 23, 2020. Judge Lockard issued a proposed decision on November 5, 2020. The Proposed Decision was served upon the Respondent, the assistant attorney general prosecuting the case, and the Board.

At an electronic meeting held on November 18, 2020, the Board voted to not initiate review of the Proposed Decision. Neither party sought review within the time allowed by 282 Iowa Administrative Code 11.28(1).

ORDER

THEREFORE, the Proposed Decision in the matter stands as the Board's final ruling.

Dated this 7th day of December, 2020.



Michael D. Cavin, Interim Executive Director
On behalf of the Board

Copies to:

Jerald Harter (certified mail and first-class mail)
RESPONDENT

Christy A. A. Hickman and Katherine E. Schoolen (electronic mail)
ATTORNEYS FOR RESPONDENT

Jesse Ramirez (electronic mail)
ATTORNEY FOR STATE

IOWA BOARD OF EDUCATIONAL EXAMINERS

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In the Matter of:)	DIA No. 20BEE0021
)	Case Nos. 19-144, 19-150
JERALD HARTER,)	
)	
Respondent.)	PROPOSED DECISION

STATEMENT OF THE CASE

On February 19, 2020, the Iowa Board of Educational Examiners (the Board) issued a Notice of Hearing and Statement of Charges against Respondent Jerald Harter, alleging the following:

Count I: Respondent is charged with committing an act of physical abuse of a student from an incident on or about August 22, 2019, in violation of 282 Iowa Administrative Code rule 25.3(1)(e)(1).

Count II: Respondent is charged with committing an act of physical abuse of a student from an incident on or about September 3, 2019, in violation of 282 Iowa Administrative Code rule 25.3(1)(e)(1).

Count III: Respondent is charged with having committed, pled guilty to, or been convicted of a criminal offense as defined by Iowa law, and said charge is relevant to and/or affects teaching or administrative performance. See 282 Iowa Administrative Code rule 25.3(1)(b)(2). Respondent pled guilty to assault in violation of Iowa Code section 708.2(6) on or about October 23, 2019.

A hearing was held on July 23, 2020 at the Wallace State Office Building in Des Moines, Iowa. The state was represented by assistant attorney general Jesse Ramirez. Respondent Jerald Harter was present and represented by attorneys Christy Hickman and Katie Schoolen.

The record in the case includes the following: the February 19, 2020 Notice of Hearing and Statement of Charges; Respondent's answer; the Board's online licensing application for Respondent, including practitioner information and license details; and the Complaints made by Joel Pedersen, Cardinal Community School District superintendent, and Amelia Root. The record also includes State's Exhibits 1 through 7. Additionally, the record includes the testimony of Jerald Harter, E.L., T.B., and Dawn Benedict.

At hearing, arrangements were made to hold the record open for briefing. A deadline of August 21, 2020 was set for initial briefing by the parties and September 4, 2020 for any responsive briefing. Respondent submitted a brief on August 21, 2020. The State

submitted a Response to Respondent's Brief on September 1, 2020. Those briefs are included in the record.

FINDINGS OF FACT

A. *Licensure and Relevant Work History*

Respondent Jerald Harter currently holds a Class A extension of standard license (folder # 238859) with endorsements in 5-12 Biological Science, 5-12 Chemistry, 5-12 Earth Science, 5-12 General Science, 5-12 Physical Science, and 5-12 Physics. Harter's license was scheduled to expire on July 31, 2020. Harter also has a coaching authorization, which is set to expire on July 21, 2022. During the 2019-20 school year, Harter was employed as a high school teacher in the Cardinal Community School District. He also coached the girls' volleyball team. Harter had worked in the Cardinal CSD for 10 years. He has been a teacher for 32 years. (Exh. 5; Harter testimony).

In May 2020, following the issuance of the Notice of Hearing and Statement of Charges, Harter retired from his position with the Cardinal CSD. (Harter testimony).

B. *August 22, 2019 and September 3, 2019 Incidents*

E.L. was a junior at Cardinal High School during the 2019-20 school year. E.L. played on the volleyball team, which was coached by Harter, and was enrolled in a science class taught by Harter. On August 22, 2019, the volleyball team had an open gym. The team was in a huddle and Harter was talking to them. E.L. and some teammates were having a side conversation while Harter was talking. E.L. was the last one talking in the group. Harter was holding a meter stick that had a small metal end on it that he had been using to protect the gym floor while cutting some netting. While E.L. was talking, Harter hit her on her leg near the knee with the meter stick. According to E.L., the area where Harter struck her started to tingle and bruise up right after the incident. E.L. reported that she started crying when this occurred. Harter offered to allow E.L. to hit him back but she declined. (E.L., Harter testimony).

Later that night, E.L. and her parents attended back to school night at the school, where they saw Harter. E.L. and Harter remember this interaction differently. According to E.L. and her mother, Amelia Root, E.L. brought up the incident first, asking her mother in a joking fashion whether she knew that Harter hit her at practice today. Harter testified that he was the one who brought up the incident with E.L. and her family at back to school night. E.L. testified that she did not take the incident too seriously at the time. (E.L., Harter testimony; Exh. 1, p. 5).

On September 3, E.L. testified that she and a friend were walking into a class that they took with Harter and were talking. According to E.L., Harter had a hockey stick in his hand and hit her in the leg with the stick when she passed him. E.L. testified that Harter said something like, "Maybe you'll learn to stop talking." E.L. reported that the hit on September 3 was not as hard as the hit on August 22. There was no mark as a result of that incident and it did not hurt as much. (E.L. testimony).

E.L. reported the September 3 incident to her parents on September 9. On September 10, E.L.'s parents visited with the high school principal to discuss the issues. Root submitted a written complaint to the school at some point after meeting with the principal. The complaint alleges that a couple days after August 22, E.L. showed her mother the bruise on her leg where Harter had hit her. Root indicated in the complaint that she did not think to take a picture of the bruise at the time. (Exh. 1, pp. 3-5).

C. *District Investigation*

On September 11, 2019, the district placed Harter on administrative leave with pay pending an investigation. As part of the investigation, E.L., Root, Harter, and other students and adults who are not named in the investigative report were interviewed. The investigator made the following findings in her report dated September 16, 2019:

- 1) Mr. Harter admits that he "popped" [E.L.] with a meter stick on August 22. Witnesses verified this.
- 2) While Mr. Harter does not remember the classroom incident, he agrees that he could have tapped [E.L.] with a stick as she came into his 2nd hour class. This was witnessed by another student. He refuted that he would have said "now maybe you will learn not to talk." Mr. Harter's recollection was verified by a witness.
- 3) Through witnesses interviewed, the spot on the leg from the incident on August 22 in practice that started at 3:45 p.m., could not be seen or felt on Friday morning, August 23.

(Exh. 1, pp. 4, 9).

The investigation document that was prepared concluded that while the investigation did not find evidence that would meet the requirements for a founded decision under 281 Iowa Administrative Code Chapter 102,¹ the behavior of hitting or popping a student with an object is not acceptable and cannot continue. The matter was referred back to school administration for consequences for the incident. (Exh. 1, p. 4).

On September 17, 2019, the district issued Harter a letter of reprimand and required him to serve a paid suspension from his duties as volleyball coach from September 17 through September 25, 2019. Harter's position as a classroom teacher was unaffected by the suspension. The letter of reprimand noted that Harter engaged in "inappropriate physical contact toward a student" that was not legally excused or justifiable. The letter stated that Harter's behavior was unprofessional and unbecoming of a teacher who should be serving as a role model and that the contact made the student feel uncomfortable and unsafe. (Exh. 1, p. 11).

¹ That chapter creates a uniform procedure for reporting, investigation, and disposition of allegations of abuse of students directly resulting from the actions of school employees or their agents.

D. Criminal Investigation and Charges

On September 24, 2019, after the district's investigation had concluded, Root contacted the Wapello County Sheriff's Office regarding Harter's conduct toward E.L. Root reported the August 22 and September 3, 2019 incidents and noted that the district had investigated the incidents and determined they were unfounded. Root told law enforcement that she believed more should have been done. Root also provided a copy of a photo that was taken from a video recorded on August 23, 2019 that she believed showed a bruise on E.L.'s leg. (Exh. 1, p. 7).

Deputy Chris Shadduck interviewed Harter on September 25, 2019. Harter acknowledged that he had hit E.L. with a meter stick on August 22 on the left outside knee joint area. Harter stated he did not intend for the strike to be as hard as it was; as the meter stick was long and thin it had a little more "whip" to it than he thought it would. Harter reported that he apologized to E.L. and did not see any injury. With regard to the second incident at the beginning of September, Harter reported to Shadduck that he did not remember the incident, but it is possible it happened as he jokes around with students frequently. (Exh. 1, p. 8).

Shadduck interviewed another student, L.S., who Root had indicated during the school investigation was a witness to an injury on E.L.'s leg. L.S. reported to Shadduck that she had not seen any injury on E.L.'s leg. Shadduck also spoke with two assistant volleyball coaches, Samantha Garrett and Katie Orwig. They confirmed that Harter had struck E.L. with a yardstick. They stated they saw a small circle on E.L.'s leg in the area where Harter hit her. They believed the circle came from the metal piece at the tip of the stick. They both stated that they could see the mark on the first day of school, which was four days after August 22. Both stated that they did not see bruising in the area where Harter hit E.L. (Exh. 1, p. 8).

Shadduck's report notes that another student, T.B., who is a friend and volleyball teammate of E.L., reported to him that she could see a small red mark where Harter hit E.L. on August 23, but she never saw any bruising. The report also indicates that T.B. stated that the red mark was no longer visible after August 23. (Exh. 1, p. 8).

Shadduck interviewed E.L., who reported that Harter had hit her on August 22 during practice in the left knee area. She stated that it hurt when he struck her and that it left a red mark. E.L. reported that after showering on August 24 she noticed a bruise and red mark. E.L. also stated that she showed Garrett and Orwig the red mark on her left leg on August 26, the first day of school. (Exh. 1, p. 8).

E.L. also reported that Harter hit her on the same leg with a stick again while she was entering his class approximately two to three weeks after the first incident. E.L. reported that Harter used a different stick that time. She was surprised that it happened, but it was not painful. (Exh. 1, p. 8).

As a result of the August 22 incident, Harter was charged with simple misdemeanor assault under Iowa Code section 708.2(6). Harter pleaded guilty to the offense and

received a deferred judgment. He was ordered to pay a \$65 civil penalty and complete six months of probation. (Exh. 2, p. 31).

E. Complaints

On September 30, 2019, Root filed a complaint with the Board of Educational Examiners, alleging that Harter engaged in physical abuse against E.L. in violation of Iowa Admin. Code 281-25.3(1)(e)(1). The Cardinal Community School District superintendent also filed a complaint on October 8, 2019 alleging that Harter engaged in physical abuse against E.L. Root's complaint referenced the August 22 and September 3, 2019 incidents; the district's complaint referenced only the August 22, 2019 incident. The Board initiated an investigation led by Jim McNellis. Harter did not respond to McNellis's attempts to contact him regarding the allegations. As part of the investigation process, E.L.'s mother submitted a copy of a still picture taken from a video recorded on August 23, 2019. E.L.'s mother circled a spot on E.L.'s leg where she believes a bruise is visible. (Exh. 4).

F. Hearing Testimony

At hearing, Harter acknowledged, as he did in the investigation by the district and in the criminal investigation, that he "popped" E.L. with a stick on August 22, 2019. Harter also repeated that he could not recall touching E.L. with a hockey stick on September 3 or thereabouts, as she alleged, but that he may have done so. (Harter testimony).

The Cardinal High School varsity volleyball team played in a tournament on September 7, 2019. T.B. and E.L. both attended. On September 9, the Monday after the tournament, E.L. stayed after Harter's class to talk to him. She told him that her mom wanted to know whether she was going to play varsity volleyball. Harter told E.L. that she would be on the varsity team, but would likely not play much. On September 10, E.L. turned in her varsity uniform to Harter. (Harter, T.B. testimony).

T.B., who was a volleyball teammate, was at the practice on August 22 when Harter hit E.L. with the meter stick. T.B. testified that the contact was not hard. E.L. sent T.B. a photo of her leg from August 22 that showed a red mark that had the same pattern as the metal end of the meter stick. E.L. did not mention the incident to T.B. again until after September 7. E.L. told T.B. the Tuesday or Wednesday after the volleyball tournament that she was going to get Harter fired. (T.B. testimony).

T.B.'s mother, Dawn Benedict, was present at the September 7 volleyball tournament and sat next to Root in the bleachers. Benedict testified that Root was extremely upset that E.L. did not play much in the tournament games. Root did not believe that Harter was playing E.L. fairly. (Benedict testimony).

CONCLUSIONS OF LAW

The legislature created the Board of Educational Examiners with exclusive authority to license practitioners and develop a code of professional rights and responsibilities,

practices and ethics. The Board has promulgated a Code of Professional Conduct and Ethics at 282 Iowa Administrative Code chapter 25. Additionally, the Board has the authority to enforce its rules through revocation or suspension of a license, or by other disciplinary action against a practitioner licensed by the Board.²

Counts I and II: Physical Abuse of a Student

Counts I and II, which relate to the alleged incidents on August 22 and September 3, 2019, allege a violation of Iowa Admin. Code 281-25.3(1)(e)(1), which provides:

e. Student abuse. Licensees shall maintain professional relationships with all students, both inside and outside the classroom. The following acts or behavior constitutes unethical conduct without regard to the existence of a criminal charge or conviction:

- (1) Committing any act of physical abuse of a student[.]

Physical abuse is not defined in the Board's rules. It is defined in the state board of education's regulations as "nonaccidental physical injury to the student as a result of the actions of a school employee."³ The parties each cited to different definitions of physical abuse in briefing. Respondent cited to Iowa Code section 232.2(42), in the Juvenile Justice chapter, which defines "physical abuse or neglect" as "any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian, or custodian or other person legally responsible for the child." The State cited to Iowa Code section 232.68(2)(a), in the same chapter, which defines "child abuse" as including "[a]ny nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of a child." For the purposes of this case, there is no irreconcilable difference between these three definitions; each requires a nonaccidental physical injury that is caused by the actions of an individual responsible for the child.

Under the state board of education's regulations, "injury" from physical abuse occurs "when evidence of it is still apparent at least 24 hours after the occurrence."⁴ Citing *State v. Luppess*, the State argues that injury should be defined as "physical pain, illness, or any impairment of physical condition."⁵ *Luppess*, however, deals with the definition of injury under Iowa Code section 708.8(2), which outlines the criminal penalties for assault. The assault definition does not govern what constitutes physical abuse under the Board's regulations.⁶

² Iowa Code § 272.2.

³ 281 Iowa Administrative Code (IAC) 102.2.

⁴ 281 IAC 102.2. Under the Department of Human Services regulations, the definition of physical injury includes "damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition."

⁵ 358 N.W.2d 322, 325 (Iowa App. 1984).

⁶ It is important to note that the offense of simple misdemeanor assault, which is the charge that Harter pleaded guilty to, does not require physical injury. An individual can commit assault by engaging in an act that is intended to result in physical contact which will be "insulting or

There is no dispute here that Harter's striking of E.L. with the meter stick on August 22 was nonaccidental; while Harter testified that he did not mean for the meter stick to hit E.L. with as much force as it did, he does not dispute that he intended for the stick to make contact with her. There is a dispute, however, as to whether Harter's action caused an injury to E.L. The evidence on this point is mixed. E.L. testified at hearing that the area on her leg where Harter struck her with the meter stick began to tingle and bruise right away on August 22. In the complaint that she filed with the school district, E.L.'s mother reported that she saw a bruise on E.L.'s leg a couple days after August 22. E.L. told Shadduck during the criminal investigation that she showed the two assistant volleyball coaches a red mark from the incident on August 26, the first day of school. Shadduck's report reflects that the two assistant volleyball coaches told him that they could see a mark on the first day of school, but that they did not see any bruising. L.S., a student who E.L.'s mother told Shadduck was a witness to an injury on E.L.'s leg, told Shadduck that she did not see any injury to E.L.'s leg. E.L.'s friend, T.B., who was present when the August 22 incident occurred, testified at hearing that she saw a red mark on August 22, but that she did not see any mark or bruising on August 23 or at any point after that. T.B. was at show choir with E.L. on August 23 and E.L. was wearing shorts that exposed her leg where Harter had struck her. T.B. testified she did not see any mark. While Shadduck's report indicates that T.B. told him she saw a mark on E.L.'s leg on August 23, T.B. expressly testified at hearing that she did not tell Shadduck she saw a mark on August 23. T.B. did see a red mark on August 22 and indicated that Shadduck might have gotten the dates mixed up.

With the exception of E.L. and her mother, no one else at hearing or during the district or criminal investigation reported having seen any bruising on E.L.'s leg. Given how persistent E.L.'s mother was in following up regarding these incidents with the district and law enforcement, her assertion in her complaint to the district that she saw a bruise on E.L.'s leg but did not think to photograph it does not appear particularly credible. E.L.'s mother did not testify at hearing. E.L. and her mother were upset at Harter about E.L.'s volleyball playing time and made their complaint to the district after the tournament at which E.L.'s mother did not feel that Harter played E.L. fairly. E.L. told T.B. that she was going to get Harter fired. Under these circumstances, I do not credit E.L.'s testimony at hearing and the reports she and her mother made during the district and law enforcement investigation that there was bruising on her leg as a result of Harter's actions. T.B., who testified at hearing and who was in a good position to have seen any bruising at show choir practice on August 23, testified that there was no bruising on August 23. T.B. is a friend and teammate of E.L. and there is nothing in the record that would indicate she has any motive to be untruthful. I find her testimony on this point credible.

offensive to another." Iowa Code § 708.1(2)(a). Consequently, Harter's guilty plea to the offense of simple misdemeanor assault is not dispositive as to whether there was physical abuse under the Board's regulations. The requirements for the criminal offense of assault and an administrative finding of physical abuse of a student are not identical.

E.L.'s mother also submitted to Shadduck a still photo taken from a video made at show choir camp on August 23. She alleged that the video shows bruising to E.L.'s leg. The State has submitted the photo as evidence to support the conclusion that there was an injury to E.L. The quality of the photo is such that it is difficult to tell whether there is in fact bruising to E.L.'s leg or simply shadowing on her leg. T.B., who saw the still photo from the show choir camp, testified that the area on E.L.'s leg where bruising is alleged to be in the photo was not where Harter hit E.L. on August 22. T.B. testified that there was no bruising on August 23 when she saw E.L. in person at show choir camp. Again, T.B.'s testimony on this point is credible. I do not conclude that the photograph shows bruising on E.L.'s leg that happened as a result of Harter's actions on August 22.

This leaves, then, the report from the two assistant volleyball coaches to Shadduck that they saw a red mark on E.L.'s leg on August 26, four days after the incident at practice. The report specifically notes that they denied seeing any bruising. T.B., who saw the red mark on August 22, testified at hearing that there was no red mark on August 23 or after that point. Neither of the assistant coaches testified at hearing and neither of them reported the incident itself or any subsequent observation of injury to anyone in district administration. Under these circumstances, I credit T.B.'s in person hearing testimony over the hearsay information that appears in Shadduck's report.

Under these circumstances, a preponderance of the evidence does not exist to support the conclusion that there was an injury to E.L.'s leg as a result of Harter's actions on August 22 that was still visible 24 hours after the incident. While T.B. credibly testified that she observed a small red mark at the time that the incident happened, there is no other credible evidence that any mark or bruising was visible on or after August 23. Accordingly, the allegation of physical abuse has not been proven for the August 22 incident.

Regarding the September 3 incident, E.L. herself testified that there was no bruise or mark following Harter tapping her with a hockey stick on the way into class on September 3. Harter could not recall this incident, but likewise he could not deny that it occurred. Even assuming that Harter did tap E.L. with a hockey stick on September 3, no physical injury occurred. Accordingly, the alleged violation of physical abuse has not been proven for the September 3 incident.

Count III: Criminal Conviction Relevant to or Affecting Teaching Performance

Count III alleges a violation of Iowa Admin. Code 282-25.3(1)(b)(2). Standard I, where this charge arises, relates to commission of or conviction for criminal offenses that are relevant to or affect teaching or administrative performance. The standard sets out two separate categories of convictions: convictions where revocation of a teaching license is mandatory, including enumerated forcible felonies and criminal sexual offenses; and convictions or founded child abuse where the Board has discretion as to whether a licensee should be disciplined. It is the second category that is at issue here. Simple misdemeanor assault, the conviction at issue here, does not fit into the category for which revocation is mandatory. For those convictions where the Board has discretion,

the Board must consider the following factors in determining whether a licensee should be disciplined:

1. The nature and seriousness of the crime or founded abuse in relation to the position sought;
2. The time elapsed since the crime or founded abuse was committed;
3. The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
4. The likelihood that the person will commit the same crime or abuse again;
5. The number of criminal convictions or founded abuses committed; and
6. Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.⁷

There is no dispute here that Harter pleaded guilty to and received a deferred judgment for the offense of simple misdemeanor assault related to the August 22, 2019 incident with E.L. Respondent argues that the deferred judgment does not constitute a conviction for purposes of this subsection.

A deferred judgment in Iowa is defined as a “sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court and whereby the court assesses a civil penalty . . . upon the entry of the deferred judgment. The court retains the power to pronounce judgment and impose sentence subject to the defendant’s compliance with conditions set by the court as a requirement of the deferred judgment.”⁸ Upon fulfillment with the conditions of probation and the payment of fees, the defendant shall be discharged without entry of judgment.⁹ A person who has been discharged from probation under the terms of a deferred judgment “shall no longer be held to answer for the person’s offense.”¹⁰ Upon discharge from probation pursuant to a deferred judgment, the court’s criminal record with reference to the deferred judgment shall be expunged. The expunged record is a confidential record exempt from public access.¹¹

The Iowa Supreme Court addressed the issue of whether a deferred judgment is a conviction in *Schilling v. Iowa Department of Transportation*.¹² The Court concluded that the term conviction cannot be given a hard and fast definition and distinguished between a conviction used to increase a criminal penalty and one used to protect the public. Where a conviction is used to enhance punishment, the Court has imposed a

⁷ 282 IAC 25.3(1)(b)(2).

⁸ Iowa Code § 907.1(1).

⁹ Iowa Code § 907.3(1)(c).

¹⁰ Iowa Code § 907.9(4)(a).

¹¹ Iowa Code § 907.9(4)(b).

¹² 646 N.W.2d 69 (Iowa 2002).

narrow meaning; however, where protection of the public is at stake the Court has accepted a broader definition.¹³

The statute that the Court examined in *Schilling* was one providing for revocation of the driver's license of a person with a "conviction . . . when such conviction has become final" for one of several enumerated offenses.¹⁴ The Court determined that the statute at issue was aimed at protection of the public. The Court concluded that, where the statute is protective in nature, the following elements will support the existence of a conviction: 1) a judge or jury has found the defendant guilty, or the defendant has entered a plea of guilty; 2) the court has ordered some form of punishment, penalty, or restraint on the person's liberty be imposed; 3) a judgment of guilty may be entered if the person violates the terms of probation or fails to comply with the requirements of the court's order; and 4) the conviction has become final. A conviction is final if the defendant has exhausted or waived any postorder challenge.¹⁵

In support of his argument that the deferred judgment is not a conviction, Respondent cites to *State v. Propps* for the proposition that "[f]inal judgment in a criminal case means sentence."¹⁶ *Propps* is not applicable to the question at issue here; it dealt in part with interpreting a provision of Iowa law providing a criminal defendant with the right of appeal from a "final judgment of sentence."¹⁷ The licensee discipline provisions at issue here are protective in nature, therefore the controlling precedent is *Schilling*. Analyzing the *Schilling* elements results in the conclusion that Harter's deferred judgment is a conviction for purposes of Iowa Admin. Code 281-25.3.(1)(b)(2).

The determination that the deferred judgment constitutes a conviction, however, is not the end of the analysis. Respondent argues that analyzing the factors listed above with regard to whether discipline is appropriate results in the conclusion that it is not. The State has not made any argument regarding whether discipline is appropriate under the factors laid out in Iowa Admin. Code 281-25.3.(1)(b)(2). The State argues simply that the fact that the conviction was relevant to teaching supports imposition of discipline. The State's argument is unpersuasive. Iowa Admin. Code 281-25.3.(1)(b)(2) specifically requires a consideration of the factors listed in order to determine whether discipline is warranted, even where there is a conviction that is relevant to or affects teaching.

Respondent argues that he did not act out of anger or in a fit of uncontrolled emotion, but rather that the force with which he struck E.L. with the stick was unintended. Additionally, Harter argues that he has no prior history of any incidents of this type during his over 30 years of teaching and that the gravity of the event has been overstated

¹³ *Id.* at 71-72.

¹⁴ *Id.* at 70.

¹⁵ *Id.* at 73; see also *State v. Deng Kon Tong*, 805 N.W.2d 599, 603 (Iowa 2011) (for purposes of Iowa Code § 724.26, relating to persons who have been convicted of felonies being in possession of firearms, a deferred judgment constitutes a conviction where the defendant has not completed his term of probation).

¹⁶ 897 N.W.2d 91, 96 (Iowa 2017) (citations omitted).

¹⁷ *Id.*

by E.L. and her family as a result of their disappointment with Harter's coaching choices with regard to E.L.

In analyzing the factors, the crime is certainly serious with respect to Harter's position. As an educator and coach, Harter is in a position of authority over the students he teaches and coaches and is expected to protect them from conditions that are harmful to learning or safety. While Harter credibly testified that he did not intend to hurt E.L., she felt uncomfortable as a result of Harter's actions. With regard to Harter's history, he has no history of past transgressions or discipline. There is no evidence of similar allegations in the past, nor of any other criminal convictions. Harter accepted responsibility for his actions during the district's investigation and the criminal investigation.

Weighing all of the factors, discipline of Harter's license for the assault conviction is merited. There is no question that Harter's actions on August 22 were an error in judgment as an educator and coach. A criminal conviction for assault of a student is sufficiently serious to warrant discipline, even where a teacher has no prior history of such actions. The appropriate sanction will be discussed below.

Sanction

Where a violation is found, the Board has the authority to impose the following disciplinary sanctions:

1. Revoke a practitioner's license, certificate or authorization.
2. Suspend a practitioner's license, certificate or authorization until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, a practitioner from engaging in specified practices, methods, or acts.
4. Require additional education or training.
5. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
6. Issue a public letter of reprimand.
7. Order any other resolution appropriate to the circumstances of the case.¹⁸

At hearing and in briefing, the State requested that Respondent's license be revoked with no possibility of reinstatement and that a public reprimand be issued. The State did not cite, either at hearing or in briefing, any previous Board cases imposing the sanction of revocation without reinstatement under circumstances similar to those presented here.

Respondent cited to two previous Board cases where a teacher's guilty plea to assault formed the basis of the discipline charges. Both were resolved by settlement agreement.

¹⁸ 282 Iowa Administrative Code (IAC) 11.33.

The case of *In the Matter of Kim Kuhlers* involved a teacher who pressed her fingernail into a student's hand, resulting in a criminal complaint, guilty plea, and deferred judgment for the offense of assault in violation of Iowa Code section 708.2(6).¹⁹ To resolve the case, the Board imposed and Respondent accepted a written reprimand, a one year license suspension, and a requirement to complete an Ethics for Educators course. The case of *In the Matter of Mark Haburn* involved a teacher who was charged with sexual abuse in the third degree.²⁰ The teacher pleaded guilty to assault in violation of Iowa Code section 708.1. There is no information in the Stipulation and Order resolving the case or in the Notice of Hearing regarding whether the victim in the criminal case was a student. Respondent was charged by the Board with student abuse, in addition to conviction of a criminal offense, but no details of the alleged abuse are provided. The order does note that in determining the appropriate sanction to impose, the Board considered the nature and seriousness of the violations as well as mitigating circumstances, but the order does not identify what those circumstances were. In that case, the resolution of the case involved a reprimand and a requirement that the licensee complete an Ethics for Educators course.

In determining an appropriate sanction, the Board's primary concern must be the protection of students. The sanction should provide proportionate punishment for the particular violation, make provision for any necessary remedial actions, and deter other practitioners from engaging in similar behavior.

Harter is a veteran educator, therefore the error in judgment that led to his criminal conviction is particularly noteworthy. Unlike a less experienced teacher, Harter cannot claim that he was unaware of the standards governing his behavior. On the other hand, Harter has also taught for many years with no evidence of any other similar incidents. In this case, a similar sanction to that imposed in *Kuhlers* meets the Board's goals of punishment and deterrence.

ORDER

IT IS THEREFORE ORDERED that Respondent Jerald Harter shall be issued a public letter of reprimand regarding the violation that was committed.

IT IS FURTHER ORDERED that the license and coaching authorization issued to Respondent shall be SUSPENDED for a minimum period of one year from the date that this proposed decision becomes a final decision. In order to obtain reinstatement, Respondent must make application to the Board and demonstrate to the Board that the basis for suspension of his license and coaching authorization no longer exists and that it will be in the public interest for the license and/or coaching authorization to be reinstated.

¹⁹ Case No. 19-11 (Combined Statement of Charges, Settlement Agreement, and Final Order issued June 21, 2019).

²⁰ Case No. 09-02 (Stipulation and Order issued June 22, 2012).

IT IS FURTHER ORDERED that Respondent shall successfully complete a 15 hour Ethics for Educators training course. Respondent is responsible for all costs associated with the completion of the course. Respondent shall provide the Board with proof of completion of the course prior to any application for reinstatement.

Dated this 5th day of November, 2020.



Laura E. Lockard
Administrative Law Judge

cc: Christy Hickman and Katie Schoolen, Attorneys (First Class and Electronic Mail)
Jesse Ramirez, AG (Electronic Mail)
Mike Cavin, Board of Educational Examiners (Electronic Mail)
Kim Cunningham, Board of Educational Examiners (Electronic Mail)

NOTICE

Any adversely affected party may appeal a proposed decision to the Board within 30 days after issuance of the proposed decision. The notice of appeal must be in writing and signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief. 282 Iowa Administrative Code 11.28.

**BEFORE THE BOARD OF EDUCATIONAL EXAMINERS
OF THE STATE OF IOWA**

In the matter of)	Case No. 19-144; 19-150
)	Folder No. 238859
JERALD HARTER,)	
)	NOTICE OF HEARING
Respondent.)	AND STATEMENT OF CHARGES

YOU ARE HEREBY NOTIFIED that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing will be held on Monday, April 20, 2020, before Administrative Law Judge Laura Lockard, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 9:00 a.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9th Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 9:00 a.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Assistant Attorney General identified below.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 Iowa Administrative Code rule 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the request for telephonic testimony must be served on the Board and all parties. Any resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 Iowa Administrative Code rule 11.18.

5. Prosecution. The office of the Attorney General is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address:

Jesse Ramirez
Assistant Attorney General
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319
Telephone (515) 281-3395

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Ann Lebo, the Board's Executive Director, at (515) 281-5849 or to Assistant Attorney General Ramirez at (515) 281-3395.

B. SECTIONS OF STATUTES AND RULES INVOLVED

Count I

7. Respondent is charged with committing an act of physical abuse of a student from an incident on or about August 22, 2019, in violation of 282 Iowa Administrative Code rule 25.3(1)(e)(1).

Count II

8. Respondent is charged with committing an act of physical abuse of a student from an incident on or about September 3, 2019, in violation of 282 Iowa Administrative Code rule 25.3(1)(e)(1).

Count III

9. Respondent is charged with having committed, pled guilty to, or been convicted of a criminal offense as defined by Iowa law, and said charge is relevant to and/or affects teaching or administrative performance. See 282 Iowa Administrative Code rule 25.3(1)(b)(2). Respondent pled guilty to assault in violation of Iowa Code section 708.2(6) on or about October 23, 2019.

C. JURISDICTION AND LEGAL AUTHORITY

10. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 Iowa Administrative Code chapter 11.

D. FACTUAL CIRCUMSTANCES

11. Respondent holds a Class A Extension of Standard LICENSE (FOLDER # 238859) with the following endorsements: 5-12 Biological Science; 5-12 Chemistry; 5-12 Earth Science; 5-12 General Science; 5-12 Physical Science; 5-12 Physics. This license is current and will next expire on 7/31/2020. Coaching Authorization which is set to expire on 7/21/2022.

12. During all material events of this case, Respondent was employed as a teacher and coach with the Cardinal Community School District.


13. On September 30, 2019 and on October 8, 2019, the Board of Educational Examiners received complaints against Respondent alleging various violations. On or about January 6, 2019, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

14. Investigation revealed that on August 22, 2019 and September 3, 2019 the Respondent, during the course of his employment as a teacher and/or coach with the Cardinal Community School District, did hit a minor victim with a stick. On at least one occasion leaving a bruise. The Respondent plead guilty to related assault charges in Criminal Case No. SMSM043227 (Wapello County, Iowa).

E. SETTLEMENT

15. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 Iowa Administrative Code rule 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Assistant Attorney General identified in Section A, above.

Dated this 19th day of February, 2020.



Ann Lebo, Executive Director
Iowa Board of Educational Examiners

Copies to:

JERALD R. HARTER (first-class mail and restricted certified mail)
RESPONDENT

Jesse Ramirez (electronic mail)
ATTORNEY FOR THE STATE